

No-Fault Divorce: A Cultural Product

A Senior Honors Thesis

Presented in Partial Fulfillment of the Requirements for graduation
with distinction in Sociology in the undergraduate colleges
of The Ohio State University

By

Teresa Slattery

The Ohio State University
March 2007

Project Adviser: Assistant Professor Liana Sayer, Department of Sociology

This thesis examines the adoption of no-fault divorce laws through sociology of law functionalist and conflict/feminist perspectives. Previous research on the adoption of no-fault divorce laws has focused primarily on the after math, but little attention has been paid to those factors influencing which states' adopted these laws. This paper will look at the discord between written laws and laws in action and the gendered opportunity structures in each state to determine what relationship exists between these factors and the adoption of two types of no-fault divorce. The results indicate states that adopted a pure no-fault divorce system, one that eliminates fault from divorce and alimony decisions, were more likely to have a greater dissonance between their written laws and the laws' actual application compared with those states that retained the use of fault in alimony allotments. States that adopted a pure no-fault system also had more open gendered opportunity structures than those that retained fault in alimony.

Laws are a product of society; as societal norms, ideologies, and behaviors change, laws that lose their functionality should change as well. The 1960s and 1970s were decades of tremendous social change. The second wave of feminism emerged in this period, alongside the struggle for racial equality, as well as a new emphasis on the goals of individual satisfaction and self-realization. Traditional ideologies of separate spheres were displaced as women increasingly sought personal development rather than satisfaction from family roles and men. As ideologies change, opportunity structures shift to allow previously oppressed groups access to those institutions once denied. Macro-level change in gender ideologies coincided with a movement in Western countries away from fault requirements in divorce law to the more liberal idea of irretrievable breakdown (Phillips 1988). While most states adopted no-fault grounds for divorce proceedings by the end of the 1970s, many retained fault as a consideration in alimony apportionments. It is plausible that this distinction is associated with state level variation in women's status and gender relations, a topic that has received little attention in the literature. This paper will examine the relationship between state-level variation in gendered opportunity structures and the adoption of a "pure" no-fault divorce system.

Prior to 1960, divorce laws worked to maintain and reinforce the gender hierarchy both within and outside of the family. Based on a cultural norm of separate spheres, divorce laws were written and implemented to encourage spouses to play the appropriate gendered role. The world, within this legal framework, was divided into the public and private spheres, and spouses' roles were clearly defined. The private sphere was the home, and this area was designated to the wife. Her role in traditional marriage was to raise the children and maintain the household so the husband was able to focus entirely on his role of economically supporting the family. The public sphere, which included societal institutions such as the economy, higher education, and politics,

was reserved for men, because of the presumed functional nature of the male breadwinner, female caregiver family system. Traditional divorce laws were written as narrowly as possible to restrict access to divorce. Those few acceptable grounds for divorce were defined by the gendered spheres of the family and the spouses' fulfillment of their designated role (Fine & Fine 1994, Weitzman 1985).

Most states abandoned this traditional construction of the family and divorce by the end of the 1970s and adopted some form of no-fault divorce. Two perspectives on why widespread divorce reform occurred dominate the literature. On the one hand, the functionalist perspective, seen in the arguments of Jacob (1988) and Weitzman (1985), posits that reform resulted from "routine" policy making guided by experts in family law and was not the result of social activism or political conflict. Experts were motivated by a desire to reduce the dissonance between how divorce law was actually administered and how the law was formally codified. On the other hand, the conflict/feminist perspective suggests that reform occurred because of the struggle for gender equality within the family and the larger society and related changes in gendered opportunity structures (Allen 1998, Fuchs 1983).

This research extends prior studies by framing the change in divorce law broadly within the sociology of law paradigm, specifically employing functionalist and conflict/feminist legal theory. Previous research on divorce reform has focused on the relationship between state variation in divorce reform and subsequent changes in the divorce rate, examined individual level consequences of divorce, or hypothesized a causal link between the phenomenon of no-fault divorce and national level changes in gender roles and ideologies. Little research has examined state-level variation in factors associated with divorce reform. Yet, only 22 states adopted "pure" no-fault divorce laws whereas the remainder continued to use fault in alimony

decisions. Prior work has found that state-level variation in the gendered opportunity structure is associated with key legal shifts in women's status, such as women's suffrage and state ratification of the Equal Rights Amendment (McCammon et al. 2001, Soule & Olzak 2004). Hence, investigating whether state differences in the gendered opportunity structure are associated with the type of divorce reform adopted will advance sociological knowledge about the mechanisms that link societal shifts in norms and ideological climates and changes in the law.

Background on Divorce Laws in the U.S.

Divorce law is unique in the United States because there is no uniform national law; instead each state gets to determine its own grounds for divorce. Despite this, the US' common law ancestry viewed marriage as an "indissoluble union;" adultery was not even a ground for divorce until 1857 in England. Traditional divorce laws required a transgression; mutual consent of a marriage's failure was not grounds for divorce, instead one spouse had to accuse the other, generally, of adultery. It was common practice under this regime for spouses to "collude, lie, and perjure themselves in court" (Buehler 1995), and for the court to look the other way. This practice resulted in divorces being much easier to obtain than the written law would have allowed.

Traditional divorce laws were based on and perpetuated gender roles. Both in the fault and alimony stages of a divorce proceeding, evidence was presented on each spouses' fulfillment of the gendered marriage contract. While both spouses were punished for adultery, albeit wives generally more severely than husbands, grounds against a husband included failure to support while those against a wife included inattention to family affairs or spending too much energy outside of the home (Weitzman 1985). Due to the failure of traditional divorce laws to prevent

divorce and the mockery it was making of the legal system, California, in 1969, adopted a no-fault provision. The trend to no-fault spread quickly across the states, and by 1987 every state had at least added a no-fault option while 12 had completely eliminated fault grounds (Buehler 1995).

The introduction of the no-fault option in divorce proceedings made divorces easier to obtain and reduced the acrimonious and adversarial tensions between spouses; however, this change alone would not eliminate the gendered marriage. As Weitzman (1985) explained, alimony allotments were based upon traditional gendered roles, where the husband would support the wife and she would raise the children, even after divorce. It is possible that the removal of fault-based alimony, which occurred in some states, developed as a result of changing gendered ideologies of marriage. In other words, in states where the gendered opportunity structures of the larger society were more hospitable to women, the fault requirements of alimony were also most open to change. A greater opportunity structure for women would reduce their reliance on men for support and would reduce the state's interest in promoting a gendered marriage that no longer reflected actual behavior. Only 22 states eliminated fault from their alimony decisions. This paper will see if in fact the gendered opportunity structures of a state are related to the form of no-fault divorce adopted.

Theoretical Framework

Previous studies of the change to no-fault divorce have failed to frame their research within the sociology of law paradigm. Generally, the sociology of law perspective argues that changes in law are due to the interaction of three factors: social actors, societal ideas, and social context (Grana et al. 2002). Within this framework, the various general theories of society guide the identification of each factor. As sociological theories present different views of the world,

their views on how change happens vary. For a structural functionalist, change is a top down process in which political elites make non-partisan decisions for the greater good of society. This is seen in explanations of the change to no-fault divorce laws which focus on the dissonance of official divorce laws and divorce law in practice. The conflict/feminist perspective, however, sees change as the result of a bottom up struggle, as seen in this research's focus on the change in the gender opportunity structure and its influence on the adoption of no-fault divorce laws. I will now examine each of these perspectives and how they frame the change to no-fault divorce.

The first perspective sees the law as a moral agent that works to keep a society coherent. Structural functionalism as prescribed by Durkheim (Banakar & Travers 2002) sees law as moral guidance which creates a cohesive society. Within this framework, although a law could be classified as oppressive, it could still be considered a good law because its basic function is to maintain societal balance. Law in this view is non-antagonistic; it is developed by non-partisan experts with the best interests of society in mind (Banakar & Travers 2002). A major critique of early formations of this perspective is its inability to explain why laws change. In response to this limitation, in 1966, Parsons developed three theories of change: system maintenance, structural differentiation, and adaptive upgrading. System maintenance sees legal change as a way to restore the balance of a functional society, and structural differentiation focuses on the development of new institutions within society for a redistribution of societal responsibilities which works to increase or restore the functionality of the system. Adaptive upgrading refers to changes in a society that increase functionality through a redistribution of resources. According to Parsons, all of these changes may occur without disrupting the overall structure of a society (Harper & Leicht 2002).

Within structural functionalism, the adoption of no-fault divorce could be seen as

adaptive upgrading or system maintenance, whereby the change in divorce law was beneficial to society at large. Structural functionalism identifies policy makers as the social actors, social ideas would be focused on creating a more efficient divorce procedure, and social context would be the disruption of the proper functioning of the old divorce laws. While this description of change is not entirely unsupported (Jacob 1988, Weitzman 1995), as a top down theory, it cannot capture the complete societal picture. While it is probably true that many state legislatures were inclined to change their laws because they were no longer functional, this does not explain why the laws became dysfunctional. Something had to have changed in the wider society that was making divorce laws no longer appropriate. This change, as proposed by this paper, was in the gendered opportunity structure. While this paper does not dismiss the validity of arguments framed in the structural functionalist perspective, it does suggest that a look at the change to no-fault from the conflict/feminist perspective will illuminate the source of the dysfunction.

Conflict theory frames law as a mechanism of oppression, whereby those with power (money and prestige) are able to exert their will over others. Within this frame, change in the law occurs when the oppressed party rebels against the status quo (Vago 2000). While feminism is fractured over the source of and remedy for women's oppression, they all agree that, particularly during the 1960s and 1970s, traditional marital roles are oppressive (Osmond & Thorne 1993). As described above, traditional marriage reinforced and maintained a gender hierarchy. This gender hierarchy was reflected in the larger society, and until there was a change in one, there would not be a change in the other. The shift in the gendered opportunity structure that occurred between 1950 and 1970 greatly altered gender roles in families. From the conflict/feminist perspective the social actors are woman and men, the social ideas are gender equality, and the social context would be the shift in the gendered opportunity structure.

With the basics of each legal perspective laid out, this paper now turns to what these propositions suggest about the reasons for the adoption of a “pure” no-fault or a mixed fault system. The functionalist perspective suggests that the adoption of a pure no-fault divorce system is more likely to occur in states where the divergence between actual divorce proceedings and the law as written were the most extreme. Change in the law here would reduce dissatisfaction with the system by removing the pervasive hypocrisy of divorce litigation. Pure no-fault would also reduce acrimony between partners because the adversarial nature of divorce proceedings would be gone. In essence, the function of divorce law – to preserve those marriage that could be saved and to end with as little tension or sham evidence as possible those marriages that were irretrievably rendered – would be operating smoothly once again. Change did not result from an organized movement to achieve gender equality rather, it occurred incrementally to get the system back in sync (Fine & Fine 1994, Jacob 1988, Weitzman 1985).

This theory of the change in divorce law is supported by some empirical studies. Previous theorizing on the change in divorce law has consistently reported the same social conditions: primarily that fault based divorce was ineffective. Marriage was not breaking up due to legalized types of fault (adultery, cruelty and desertion), these were only the symptoms of marital failure based in a context of conflicts in attitude, personality, or other difficulties (Phillips 1988). There was use of collusion and perjury to get out of marriages under this fault system and leniency in courts for proof of fault (Phillips 1988, Rheinstein 1972, Wheeler 1974). These factors, in addition to migration, that is married persons moving from one jurisdiction to another with more lax divorce laws (Fine & Fine 1994, Rheinstein 1972, Wheeler 1974), were widespread towards the end of the fault-based system and effectively undermined its ability to prevent divorce from occurring. Still, this does not explain why some states implemented more broad reform whereas

others adopted more limited measures.

The conflict/feminist perspective, in contrast, posits that pure no-fault reform was a direct challenge to the gendered basis of prior divorce laws. States that adopted a pure no-fault system should be those in which women had more access to educational, employment, and political arenas. Variations in these state-level gendered opportunity structures are themselves the result of prior group conflict, political protests, and social movements meant to secure more equality and access to status and material resources for women, which lead to directly challenging the gendered nature of family and family law. Pure no-fault should be adopted by states with more greatly altered gendered opportunity structures because the ideological and behavioral underpinnings of gender inequality are more salient. The change to no-fault divorce should not be seen as a change that occurred in a vacuum, but one that occurred along side other legal changes to remove gender discrimination from laws (Buehler 1995).

Weitzman (1985), as mentioned briefly above, identifies the gendered nature of traditional family law. Marriage was an institution based on gendered roles and responsibilities. In this system, the gendered spheres discussed above were not just a social idea, but a legal prescription; men were breadwinners and women were housewives, and deviation from these roles was not acceptable and in fact punishable under the traditional system. Roles were not just gendered; they were also hierarchical, making men the legal representative of the family. This system of patriarchy resulted in women marrying younger, forgoing experiences in higher education and the labor force because of their irrelevance to home-making, in addition to stripping them of any individuality or ownership, even of self. Women were required by law to take their husbands last name, to be subservient to his wishes on where to live, and to submit entirely to his sexual desires. Marriage, in the traditional system, was also a life long

commitment and partnership. Although roles were not equal and women were not part of the public economy, all familial property was considered to belong equally to each party. So, although a woman might not contribute to the actual accumulation of familial property, her role within the household was acknowledged and rewarded with equal ownership of what her labor allowed her husband to acquire. Weitzman (1985) goes on to argue that the change to no-fault erased these conceptions of marriage; no-fault is a gender neutral system that does not assume the continuation of gendered roles by former spouses after a divorce. This reflects the reality of women's participation in the public sphere; even though men were not moving into the private sphere, women's increased involvement in the public sphere directly contradicted the dichotomous ideologies reinforced by the traditional divorce system. Under the no-fault system, spouses are not punished for straying from traditional gender roles, nor are they rewarded for fulfilling them which, Weitzman (1985) argues, leads to increased movement of women out of the home and a continuation of the erosion of separate spheres.

As predicted by the conflict/feminist perspective, prior to the change in law there were marked shifts in women's roles and ideas about women's roles. The change in gender ideology occurred alongside, and was influenced by a trend that emerged in the 1960s to emphasize individualism over fulfillment of societal roles. Between 1950 and 1970, women's behavior shifted away from the traditional model of marriage as described by Weitzman (1985). For both women and men in the 1950s, women's role as mother and housewife was considered to be their primary and most important identity. Society was bombarded in this period by experts exalting the traditional gender roles as the natural order. Girls in this period were completing fewer years of higher education, marrying at younger ages, and having more babies than the earlier cohort. Women who did complete college in this period also lacked career aspirations, wanting only a

family and a house (Friedan 1963). This trend continued into the early 1960s, until women began seeing the gap between the egalitarian idealism imparted by higher education and the lack of prestige and value actually afforded to “occupation housewife” (Rosenberg 1992). In the 1960s and 1970s, women were marrying later, attending and graduating college more often, delaying childbirth (due to previous two characteristics), and more women were remaining in the work force despite the presence of small children at home (Bianchi & Spain 1984). These changes in women’s behavior occurred concurrently with changes in attitudes about women’s roles.

Thornton and Freedman (1979) found that between 1962 and 1977, there was a significant increase in women’s attitudes toward egalitarian gender relations. In 1962, women with more education and with more work experience held more egalitarian beliefs with the latter’s attitudes being the most egalitarian. Shifts in egalitarianism from 1962 to 1977 were more pronounced for women with husbands who had more education, and who were in the youngest age bracket in 1962. Thornton and Freedman found that all women in the 1977 survey showed increases in their egalitarian attitudes regardless of their experiences in the intervening years, however, women who increased their education and work experience showed the largest increases in egalitarianism. Despite the scarcity, or lack, of research on gender ideologies prior to 1970, researchers have noted that men, to this day, tend to hold more traditional gender ideologies and that shifts in men’s attitudes have continuously lagged behind women’s (Ciabattari 2001). Further, gender ideologies did not change on their own. Prior to the feminist movement of this period, the civil rights movement had brought the language of equality to the foreground of social consciousness (Bianchi & Casper 2002). With the general lexicon of equality established, the introduction and emphasis on self-realization emerged. This belief system advocates “self-development: Each person should develop a fulfilling, independent self

instead of merely sacrificing oneself to one's partner...that roles within marriage should be flexible and negotiable" (Cherlin 2004).

Empirical support for the conflict/feminist perspective is found in works that emphasize changes in the values and norms of the larger society (Goode 1993), such as a rise in the belief that people have a right to get a divorce if they are unhappy, and that it is not the states' place to regulate divorce (Jacob 1988, Minow 1997, Whitehead 1997). Alterations in economic opportunities developed in the years before the change to no fault that reduced the gains of marriage for both parties (Parkman 1992) and increased women's independence (Goode 1993, Jacob 1988, Parkman 1992, Whitehead 1997). Researchers have also considered changes at the individual level as an explanation for divorce law change. As people became more focused on themselves as individuals, the traditional bonds of marriage and their constraints on divorce became less salient and thus, societal imperatives to support marriage as a gendered institution also weakened (Carl Schneider as described in Kay 1987, Whitehead 1997).

In addition, a brief look at the progression of women's social status in American society shows how the change to no fault divorce can be viewed as the next step in a slow process to undo the gender hierarchy implicitly built into our constitutional system. Joan Hoff-Wilson (1989) has developed four categories of women's constitutional experiences: a period of constitutional neglect (1787-1872), a period of constitutional discrimination (1872-1908), a period of constitutional protection (1908-1963), and a period of constitutional equality (1963-1987). In the first period, gender roles and ideologies matched. The gender ideologies of men and women dictated that a woman's place was in the home. Motherhood was not just part of biology, but was considered to be woman's "vocation." Women were disqualified from public life because of what was believed to be all women's natural attributes, "physical weakness,

sentimentality, purity, meekness, piousness” (Baker 1984).

During this period, marriage in America, like most American law, was based on a conception created within England’s common law system. According to Blackstone, women have no legal existence within a marital relationship. This practice of covertures merges a man and woman into a single entity in the eyes of the law; although there is nothing inherently gendered with this idea, in England’s system, and therefore America’s, the practice was gendered and all the powers of an individual were stripped from the woman and vested in the man. The husband gains control not only over all family property, contract, and suffrage rights, but also over the individual members of the family (Greenberg 1998).

With this familial relationship in place, the legislative neglect of women can be understood. Firstly, women were not included in the Constitution or Bill of Rights; women were neither explicitly included nor excluded. Women’s status did not need to be defined because the men writing the Constitution did not consider a woman a political entity separate from her husband; his rights were considered one and the same as family rights (Hoff-Wilson 1989). Women’s forced dependence on husbands was somewhat altered with the Married Women’s Property Act of 1830. This act eased covertures laws by increasing the ability of women to retain their own separate property (Basch 1986). Constitutional neglect was possible because women were not forcefully attempting to break out of gender norms.

The change to discrimination occurred because some women—a select group— from a high social class with extensive education, began to challenge traditional gender roles by attempting to participate in the public sphere. These women wanted full citizenship rights and could now argue for them with the 14th Amendment. In this period, women were denied rights not based on legal doctrine, but on traditional gender ideologies (Hoff-Wilson 1987). The period

of protection arose because the industrial revolution and massive urbanization had forced many women into the wage labor force. While “64% of working class families relied on incomes beyond the husbands” (Roark et al. 2003) in 1900, only 3% of white married women worked outside the home. Despite, or possibly because, some women were working in industry, the “cult of domesticity” persisted through the 19th century. Because of this ideology, middle class women, whose subsistence did not require them to work, did not work. They also could afford to hire working class women to perform domestic tasks. The free time hired household workers provided middle class women permitted them to spend their time working for reforms. These reforms were shaped by middle class values and therefore strongly reinforced traditional gender ideologies (Roark et al. 2003). Protective legislation was a result of the interaction of an unavoidable change in gender roles and the preservation of traditional gender ideologies. In essence, since roles changed out of necessity, traditional gender ideologies were not challenged.

The move to no-fault divorce occurs in the fourth period, constitutional equality, which was a result of continuing change in roles finally being juxtaposed with a change in gender ideologies. The second wave of feminism was emerging in this period, and liberal feminists, trained in activism through the Civil Rights Movement, pushed for legal change as a path to gender equality (Osmond & Thorne 1993). The major laws which spurred this period were the Equal Pay Act of 1963 and the addition of the word “sex” to Title VII of the 1964 Civil Rights Act (Hoff-Wilson 1989). In this period, the Court acknowledges the societal shifts in gender ideologies and prohibits the legal sanction of the traditional gender hierarchy.

The legal history presented above demonstrates how gender stratification was challenged and finally removed from the laws. The removal of gender discrimination at the national level is an indication of mass societal change in both ideologies and behaviors. While the states are

subservient to the legal doctrine espoused by the Supreme Court, changes at the state level are directly influenced by the current atmosphere of that state, hence the variation in the adoption of no-fault divorce. There was a national push for the removal of the legal prescription of gender roles, which would legitimate changes at the state level in those laws that were based on gender ideologies. The variation in the type of no-fault system adopted is a reflection of state level openness to shifting gender roles. States that had historically more open gender opportunity structures, according to the conflict/feminist perspective, would take the cue from national legal changes and do away with all gender considerations in divorce proceedings. Those states who were not accepting of women in expanding roles would grudgingly comply by only partially removing fault. Conversely, the structural functionalist perspective would deemphasize the impact of shifting gender relations and focus instead on the need to reduce the dissonance between the law and practice. Those states retaining fault in alimony decisions may have experienced less of a divergence from the written law to its application.

Hypotheses

This thesis examines two hypotheses that stem from the theoretical perspectives. First, the paper investigates whether the type of divorce reform implemented by a state is associated with its implementation of divorce law prior to reform. The functionalist perspective contends that those states with permissive divorce laws in action, as opposed to written, would be more likely to change to a pure no-fault system in order to resolve the dissonance between the law and behavior. Second, the paper investigates whether variation in the type of divorce reform implemented is associated with a state's gendered opportunity structure. The conflict/feminist perspective posits that states with more opportunities for women in educational, economic, and political institutions would have implemented no-fault provisions for both divorce proceedings

and alimony apportionments because their historical openness to gender equality would propel them to remove ascribed gendered roles completely. In contrast, states with less opportunity for women would have retained fault in alimony decisions because traditional gendered roles were more entrenched.

Data, Variables and Methods

Data for this analysis are from three primary sources: The IPUMS-USA (<http://usa.ipums.org/usa/>) provided individual-level data on adults ages 17 and over from the 1950 and 1960 decennial census which have been aggregated into state-level measures; the Statistical Abstracts (<http://www.census.gov/statab/www/>) published data on state characteristics from 1950 and 1960; and state legislators' gender composition and suffrage background are from Cox (1996).

The dependent variable in this analysis is the type of no-fault divorce system adopted by the states. States are classified into two groups: those that adopted a pure no-fault divorce system and those that retained fault for alimony decisions. Nevada, Hawaii and Alaska are omitted, Hawaii and Alaska because they were not states until 1959 and consistent data are not available for 1950 and Nevada because its historically lax divorce laws are an anomaly. Classifications of the remaining 47 states are based on data from Ellman and Loh (1998), and Table 1 shows this classification of the states.

"Pure" No-Fault			Fault in Alimony		
Arizona	Indiana	New Mexico	Alabama	Mississippi	Rhode Island
Arkansas	Iowa	Oklahoma	Connecticut	Missouri	South Carolina
California	Kansas	Oregon	Georgia	New Hampshire	South Dakota
Colorado	Maine	Utah	Kentucky	New York	Tennessee
Delaware	Minnesota	Washington	Louisiana	North Carolina	Texas
Florida	Montana	Wisconsin	Maryland	North Dakota	Vermont
Idaho	Nebraska		Massachusetts	Ohio	Virginia
Illinois	New Jersey		Michigan	Pennsylvania	West Virginia
					Wyoming

Table 2 shows the variable coding and source for independent variables used in this analysis. Characteristics of the gendered opportunity structure consist of measures of women's access to higher education and employment, the presence of "elite allies" in state legislators, state levels of "Maternal Aid," and marital and parental composition (McCammon et al. 2001, Soule and Olzak 2004).

Table 2. Measures of Gendered Opportunity Structures - Independent Variables

Variable	Coding	Mean	Minimum	Maximum
Highest Grade 1950*	State average educational level, women 17 and older	12.505	10.775	13.71
Highest Grade 1950, women over 25*	State average educational level, women 25 and older	12.271	10.447	13.527
Highest Grade 1960*	State average educational level, women 17 and older	13.046	11.815	14.097
Highest Grade 1960, women over 25*	State average educational level, women 25 and older	12.858	11.400	13.988
Higher Education 1950^	Women's proportion of adult enrollment in higher education	0.319	0.233	0.379
Higher Education 1960^	Women's proportion of adult enrollment in higher education	0.373	0.305	0.433
In Labor Force 1950*	Proportion of all women in the labor force	0.269	0.182	0.354
In Labor Force 1960*	Proportion of all women in the labor force	0.354	0.262	0.425
Occupational Income 1950*	State average occupational income in \$100s	\$5.368	\$3.507	\$7.951
Occupational Income 1960*	State average occupational income in \$100s	\$11.807	\$8.494	\$14.057
Occupational Income, WM 1950-1960*	Women's change from 1950 to 1960 minus men's change from 1950 to 1960	2.780	0.654	5.427
Suffrage prior to 19th Am~	0= partial or no suffrage; 1= full suffrage	0.340	0.000	1.000
State Legislatures 1950~	Proportion of women state representatives	0.025	0.000	0.120
State Legislatures 1960~	Proportion of women state representatives	0.038	0.000	0.199
Number of Children 1950, women under 24*	State average number of children per woman under age of 24	0.609	0.299	0.877
Number of Children 1960, women under 24*	State average number of children per woman under age of 24	0.671	0.410	0.880
Maternal Aid 1950^	Federal money allocated to state in \$1,000s	\$221.364	\$54.000	\$565.700
Maternal Aid 1960^	Federal money allocated to state in \$1,000s	\$348.700	\$56.200	\$896.600
Never Married 1950, women under 24*	Proportion of women under 24 who've never married	0.500	0.331	0.676
Never Married 1960, women under 24*	Proportion of women under 24 who've never married	0.465	0.371	0.618
Permissiveness Implementation Index"	1=Very Strict; 2=Strict; 3=Moderate; 4=Permissive; 5=Very Permissive	2.915	1.000	5.000

*Variable from IPUMS-USA; ^Variable from Statistical Abstract; ~ Variable from Cox (1996); "Variable from Stetson & Wright (1975)

Women's access to higher education is reflected by the average years of education and higher education enrollment. Highest grade of education was originally recorded in the IPUMS-USA as years of education, and was aggregated to the state level. This variable was created for

1950 and 1960 for all women, 17 and older, and was also constructed in the same fashion for both decades for women 25 and older. The proportion of women enrolled in institutions of higher education was constructed for each state by dividing the total number of women enrolled by the total number of adults enrolled. This measure was constructed in 1950 and 1960. These measures provide a picture of the variation in women's access to education across states.

Two measures were used to determine the extent of access to employment women enjoyed in the various states, current labor force participation and occupational income. Labor force participation was calculated for 1950 and 1960 by calculating for each state the proportion of women currently working out of the total number of women respondents. Occupational income, also constructed for 1950 and 1960, is provided in the IPUMS-USA as the median income, in hundreds of dollars, of people within an occupation category. A state mean was calculated for this variable from the aggregated individual-level data for women. An additional measure was created for this variable that measured the difference of change from 1950 to 1960 between women and men. After creating the state level means for women, as described above, the same procedure was followed for men. A difference measure was then created for both women and men by subtracting their 1950 mean from the 1960 mean. The final measure, occupational income WM 1950-1960 in Table 2, was then calculated by taking the state level difference between the decades for women and subtracting the state level difference between the decades for men. This measure was included as a way to look at women's shifting position in society; increases in women's wages relative to men's provide an idea of women's acceptance in the work force. As women have been historically paid lower wages than men, a more pronounced increase in women's wages would indicate that they are either moving into higher paying occupations, or that women's occupations are being better compensated. Both of these

possibilities would hint at women being valued more in the workforce and that the assumption of women as workers only second to their dominant role of housewife was fading.

Political opportunity was measured with two variables, suffrage prior to the 19th Amendment and the proportion of women in state legislatures. Both of these variables were constructed from the information provided in Cox (1996). A state's prior suffrage was coded as zero if women in the state had no suffrage or partial suffrage (many states granted women the vote in school and local elections while still prohibiting their participation in national and presidential elections) and one if women enjoyed full suffrage prior to the ratification of the 19th Amendment. Women in state legislatures were created by taking the number of women serving over the total number of representatives. This variable was constructed for 1950 and 1960. These measures provide an idea of women's access to political opportunity; states with longer history of women's voting rights may be more committed to an acceptance of women in roles outside of the home, and women elected to state legislatures indicates the current acceptance of women in political roles.

Maternal aid was provided in the Statistical Abstracts as the amount of federal grants allocated to each state in \$1,000s for maternal and child health care services in 1950 and 1960. This measure was included because states have historically used maternal aid as a method of keeping women out of the labor force. Two measures of familial composition have also been included; average number of children to women under age 24 and the proportion of women under age 24 who have never married. Number of children to women under age 24 is the state mean of the aggregated individual-level number of children for women 24 and younger for both 1950 and 1960. Women who have never married is the proportion of women in every state who reported never being married over the total number of respondents. This variable was limited to

women under the age of 24 and was constructed for 1950 and 1960. These measures are included because women's delay in starting a family indicates their internalization and desire to utilize their greater access in the opportunity structure.

The last measure included in the analysis is the permissiveness index (Rheinstein 1972, Stetson & Wright 1975). This index was based on surveys from attorneys and judge involved in divorce proceedings; the respondents rated how divorce cases were really treated. The scale for this measure ranged from 1 to 95; this was grouped into 5 classifications of very strict, strict, medium, permissive, and very permissive (Rheinstein 1972), which this research has coded as 1 indicating the strictest law and 5 the most permissive. States whose implementation did not match their written laws, states with high values on the permissiveness index, may be more likely to adopt a "pure" no-fault system to alleviate the discrepancies.

Results

Independent-Samples T Tests are used to determine whether gendered opportunity structures and divorce law permissiveness vary between states that adopted a pure no-fault divorce system and those that retained fault for alimony decisions. Table 3 shows the results of this analysis. The T-Test results of the educational opportunity structure found that highest grade of education was significantly different between pure no-fault and fault in alimony states. In pure no-fault states, women age 17 and older averaged 12.9 and 13.4 years of education in 1950 and 1960 respectively, while mixed fault states averaged only 12.2 and 12.7. The pattern was the same for the state averages of women over 25; pure no-fault states averaged 12.7 and 13.3 in 1950 and 1960, and mixed fault states averaged only 11.9 and 12.5. No significant results were found for women's enrollment in higher education. The only aspect of the employment opportunity structure found to be significantly different between the groups was the change

between women and men's occupational income (Occupational Income WM 1950-1960).

Women's income in pure no-fault states increased \$325 more than men's income, while in mixed fault states women's income only increased \$237 over men's income change.

Table 3. Independent T-Test Results

Gendered Opportunity Structures	Pure No Fault State Means	Fault in Alimony State Means	T	Sig. (2 tailed)
Education				
Highest Grade 1950*	12.897	12.160	3.624	0.001
Highest Grade 1950, women over 25^*	12.690	11.903	3.783	0.000
Highest Grade 1960*	13.416	12.721	4.411	0.000
Highest Grade 1960, women over 25*	13.261	12.503	4.309	0.000
Higher Education 1950^	0.312	0.325	1.298	0.202
Higher Education 1960	0.369	0.376	0.879	0.384
Employment				
In Labor Force 1950	0.263	0.275	0.932	0.357
In Labor Force 1960^	0.348	0.359	1.093	0.281
Occupational Income 1950	5.306	5.423	0.361	0.720
Occupational Income 1950, employed women only^	19.986	19.518	1.015	0.316
Occupational Income 1960^	12.093	11.555	1.465	0.151
Occupational Income 1960, employed women only^	19.978	19.530	1.794	0.080
Occupational Income - WM 1950-1960*	3.247	2.369	2.720	0.009
Political				
Suffrage prior to 19 th Am^*	0.545	0.160	2.922	0.006
State Legislatures 1950	0.024	0.027	0.354	0.725
State Legislatures 1960	0.038	0.038	0.009	0.993
Familial Characteristics				
Number of Children 1950, women under 24	0.622	0.599	0.522	0.604
Number of Children 1960, women under 24	0.702	0.643	1.953	0.057
Never Married 1950, women under 24	0.487	0.513	1.144	0.259
Never Married 1960, women under 24*	0.443	0.484	2.454	0.018
Maternal Aid 1950^*	154.077	280.576	3.677	0.001
Maternal Aid 1960*	275.127	413.444	2.299	0.026
Classification of Divorce Laws				
Permissiveness Implementation Index*	3.500	2.400	2.944	0.005

^ unequal variance across groups

* statistically significant mean difference

Within the political opportunity structure, this test found that states that adopted a pure no-fault divorce system were significantly more likely to have granted women full suffrage prior to the ratification of the 19th Amendment; 54% of pure no-fault states granted full suffrage prior

to the 19th Am. and only 16% of mixed fault states did. Women's representation in state legislatures was not significantly different between the two groups. Tests of the familial opportunity structure found that there was not a significant difference between groups for the average number of children born to women under age 24, nor were there significant differences between groups for the proportion of women under age 24 who had never married in 1950. The T-test did find that the proportion of women under age 24 who had never married in 1960 was significantly greater in states that retained fault in their alimony decisions. States that retained fault in their alimony allocations also had significantly higher means than pure no-fault states in regard to the amount of maternal aid provided. Pure no-fault states only received \$154,000 and \$275,000 in 1950 and 1960, while mixed fault states received \$280,000 and \$413,000. The last variable tested, divorce law permissiveness index, found that states that adopted a pure no-fault divorce system were significantly more permissive, averaging 3.5, than those states that retained fault in alimony, averaging 2.4.

Conclusions

The descriptive results support both of the hypotheses. As predicted from the functionalist perspective, the states that adopted a pure no-fault system had significantly more permissive laws than those that retained fault in alimony decisions. Since structural functionalism sees changes in the law as an adaptive process, states where attorneys and judges were both aware of and an integral part of the evasion of the strict traditional divorce laws would have a more drastic change in their divorce system to correct the imbalance. The adoption of a pure no-fault system eliminates the incentive to create false charges by making them entirely irrelevant to divorce proceedings, thus restoring the integrity and functionality of the law.

The second hypothesis proposed that those states with a more open opportunity structure

for women would adopt pure no-fault legislation. This was also supported. From the conflict/feminist perspective, laws changed because the traditional gender roles prescribed by it were no longer, or at least were becoming less, applicable to women's behavior. Strong support was found for the influence of educational opportunities on the adoption of pure no-fault. As education is a mediator for many of the other variables, work, income, and family demographics, a strong relationship between the education variables and the type of legislation adopted is expected. That the relationship was strong with women over 25 and not just all women indicates that these states may have a stronger historical trend of egalitarianism. Women in these states must have had more access to education or delayed marriage longer, both of which hint at some acceptability of women in roles other than wife and mother.

The lack of a significant difference between the two groups of states for women's labor force participation could be due to the generality of the variable. Women enter the workforce for various reasons, and it is likely that women's employment is similar between states with different gendered opportunity structures. Further, the category of labor force participation did not differentiate between full and part time employment. This aspect of women's employment would be expected to vary by state, with more women working full time in states with open opportunity structures. Also, as seen in the legal review of women's status, participation in the workforce might not be directly tied with gender ideologies. What is indicative of greater egalitarianism in the pure no-fault states is that the decade change between women and men's income was greater. Women in the pure no-fault states were gaining on men's earning power more so than in the mixed states. Women in the pure no-fault states had to either be working in better jobs, or were being better compensated; this, again, hints at a greater acceptability of women in roles other than wife and mother.

While neither of the variables measuring women's role in legislatures were significant, more states that adopted pure no-fault legislation had granted women suffrage prior to the passage of the 19th Amendment. This is an indicator of those states' historicity of greater egalitarianism. The results of the maternal aid variables are harder to interpret. While they could be a sign that the pure no-fault states did not strictly enforce traditional gender roles, they may also be influenced by state poverty. Maternal aid was significantly greater in 1950 and 1960 in states that retained fault in alimony. This paternalistic aid from the government implies that women either were thought to be incapable of self-sufficiency or, were not given the opportunity to be self-sufficient due to the emphasis on traditional gender roles. On the other hand, states receiving more government aid may just have higher numbers of indigent families. In this case, the amount of government aid would not be a direct indicator of the gendered opportunity structure, as a two parent family with traditional or non-traditional gender roles may just be unable to make ends meet. Additional research into impact of state level poverty and familial composition on this measure would be needed before any conclusions on its impact can be determined. Contrary to what was expected, states that retained fault in alimony allocations had more women postponing marriage until after age 25. It could be that women's egalitarian ideologies were stable across the various states, and that those women living in states with a less open opportunity structure would rebel against the institution of marriage more than those women who were able to pursue interests outside of the family.

By applying the sociology of law framework to the question of the relationship between the emergence of no-fault divorce and societal changes, this research has shown reason to believe that a more complete understanding of legal change can be obtained by employing various perspectives simultaneously in the search for causality. This research has found further

support for previous studies that focused on the change to no-fault divorce at the legislative level. A T-Test analysis of the type of divorce law adopted by the states did show a relationship between the degree of dysfunction and the extent of the remedy, supporting the structural functionalist perspective of the change in law. However, this view alone cannot offer a complete explanation of the move to no-fault legislation.

Beginning the analysis with the elites, policy makers, fails to identify the source of the dysfunction. To only argue that policy makers changed the laws because they were ineffective, begs the question of what caused the laws to become ineffective. The review of historical trends in society and law and the T-Test results of this research offer a possible explanation to fill this void. Through a conflict/feminist perspective a source of conflict was identified, the clash between the traditional gendered marriage and women's actual behavior. The strong relationship between the adoption of a pure no-fault divorce system and a more open gendered opportunity structure reveals how societal factors play an active role in shaping the laws that regulate them.

Despite the significant results and conclusions drawn from them, it should be noted that this research has been limited by the data available. A major assumption of this work is that there was in fact a major shift in gender ideologies during this period, and that these changes would be more pronounced for women than men. While all of the measures included in this study are behaviors, it is this conception of gender ideologies that guided their inclusion. Few expansive empirical studies of gender ideologies in this period are available, and as such state level measures of gender ideologies were not able to be constructed. The construction of a state measure of gender ideologies would make salient the assumed relationship between changes in women's behaviors and their ideologies.

References

- Allen, Douglas W. "No-fault divorce in Canada: Its cause and effect." *Journal of Economic Behavior & Organization*, Vol. 37, (1998), 129-149.
- Baker, Paula. 1984. "The Domestication of Politics: Women and American Political Society, 1780-1920." *The American Historical Review* Vol. 89, No. 3: 620-647.
- Banakar, Reza, and Max Travers. *An Introduction to Law and Social Theory*. Portland: Hart Publishing, 2002.
- Basch, Norma. 1986. "The Emerging Legal History of Women in the Units States: Property, Divorce, and the Constitution." *Signs* Vol. 12, No. 1: 97-117.
- Bianchi, Suzanne M. & Daphne Spain. *American Women: Three Decades of Change*. Washington D.C: U.S. Government Printing Office, 1984.
- Buehler, Cheryl. "Divorce Law in the United States." *Marriage and Family Review*, Vol. 21, No. 3/4, 1995, 99-120.
- Casper, Lynne M. & Suzanne M. Bianchi. *Continuity and Change in the American Family*. Thousand Oaks: Sage Publications, 2002.
- Cherlin, Andrew J. "The Deinstitutionalization of American Marriage." *Journal of Marriage and Family*. Vol. 66, November 2004, 848-861.
- Ciabarttari, Teresa. "Changes in Men's Conservative Gender Ideologies: Cohort and Period Influences." *Gender & Society*, Vol. 15, August 2001, 574-591.
- Cox, Elizabeth. *Women, state, and territorial legislators, 1895-1995: a state-by-state analysis, with rosters of 6,000 women*. Jefferson: McFarland & Co., 1996.
- Ellman, I.M., and S.L. Lohr. "Dissolving the Relationship between Divorce Laws and Divorce." *International Review of Law and Economics*, 18, 1998, 341-59.
- Fine, Mark A. & David R. Fine. "An Examination and Evaluation of Recent Changes in Divorce Law in Five Western Countries: The Critical Role of Values." *Journal of Marriage and the Family*, Vol. 56, No. 2, May 1994, 249-263.
- Friedan, Betty. *The Feminine Mystique*. New York: W. W. Norton & Company, 1963, 1974, 1991, 1997.
- Fuchs, Victor. *How we live*. Harvard University Press: Cambridge, 1983.
- Goode, William. *World changes in Divorce Patterns*. Yale University Press: New Haven and London, 1993.

- Grana, Sheryl J. "The Social Context of the Law." *The Social Context of The Law*. Ed. Jane C. Ollenburger and Mark Nicholas. Prentice Hall, 1998.
- Greenberg, Judith G., Martha L. Minow & Dorothy E. Roberts, eds. *Mary Jo Frug's Women and the Law 2nd Ed.*. New York: Foundation Press, 1998. 370-376.
- Harper, Charles L. & Kevin T. Leicht. *Exploring Social Change*. Prentice Hall, 2002.
- Hoff-Wilson, Joan. 1987. "The Unfinished Revolution: Changing Legal Status of U.S. Women." *Signs* Vol. 13, No. 1: 7-36.
- Hoff-Wilson, Joan. 1989. "Women in American Constitutional History at the Bicentennial." *The History Teacher* Vol. 22, No. 2: 145-176.
- Jacob, Herbert. *Silent Revolution: The Transformation of Divorce Law in the United States*. University of Chicago Press: Chicago, 1988.
- Kay, Herma Hill. "Equality and Difference: A Perspective on No Fault Divorce and Its Aftermath." *Mary Jo Frug's Women and the Law 2nd Ed.*. Ed. Judith G. Greenberg, Martha L. Minow & Dorothy E. Roberts. New York: Foundation Press, 1998. 446-453.
- McCammon, Holly J., Karen E. Campbell, Ellen M. Granberg, Christine Mowery. "How Movements Win: Gendered Opportunity Structures and U.S. Women's Suffrage." *American Sociological Review*, Vol. 66, February 2001, 49-70.
- Minow, Martha & Mary Lyndon Shanley. "Revisioning in the Family." *Mary Jo Frug's Women and the Law 2nd Ed.*. Ed. Judith G. Greenberg, Martha L. Minow & Dorothy E. Roberts. New York: Foundation Press, 1998. 499-513.
- Osmond, Marie Withers & Barrie Thorne. "Feminist Theories: The Social Construction of Gender in Families and Society." *Sourcebook of Family Theories and Methods: a Contextual Approach*. Ed. Pauline Boss et al. New York: Plenum Press, 1993.
- Parkman, Allen M. *No-Fault Divorce: What Went Wrong?*. Boulder: Westview Press, 1992.
- Phillips, Roderick. *Putting Asunder: A History of Divorce in Western Society*. Cambridge University Press: Cambridge, 1988.
- Rheinstein, M. (1971). *Marriage stability, divorce, and the law*. Chicago: University of Chicago Press.
- Roark, James L, et al. *The American Promise: A History of the United States, Second*

- Compact Edition, Volume II: From 1865*. Boston: Bedford/St. Martin's: 2003.
- Rosenberg, Rosalind. *Divided Lives: American Women in the Twentieth Century*. New York: Hill and Wang, 1992.
- Ruggles, Steven, Matthew Sobek, Trent Alexander, Catherine A. Fitch, Ronald Goeken, Patricia Kelly Hall, Miriam King, and Chad Ronnander. *Integrated Public Use Microdata Series: Version 3.0* [Machine-readable database]. Minneapolis, MN: Minnesota Population Center [producer and distributor], 2004.
<<http://usa.ipums.org/usa/>>
- Stetson, Dorothy M. & Gerald C. Wright, Jr.. "The effects of Laws on Divorce in American States". *Journal of Marriage and the Family* Vol. 37, No.3, August 1975, 537-547.
- Soule, Sarah A. & Susan Olazk. "When Do Movements Matter? The Politics of Contingency and the Equal Rights Amendment." *American Sociological Review*, Vol. 69, August 2004, 473-497.
- Thornton, Arland & Deborah Freedman. "Changes in the Sex Role Attitudes of Women, 1962-1977: Evidence from a Panel Study." *American Sociological Review*, Vol. 44, October 1979, 831-842.
- U.S. Census Bureau, Statistical Abstract of the United States: 1951 & 1961. Washington, DC, 2005; <<http://www.census.gov/statab/www/>>.
- Vago, Steven. *Law and Society*. Prentice Hall, 2000.
- Weitzman, L.J. (1985). *The Divorce Revolution*. New York: Free Press.
- Wheeler, Michael. *No-Fault Divorce*. Boston: Beacon Press, 1974.
- Whitehead, Barbara Dafoe. *The Divorce Culture*. New York: Alfred A. Knopf, Inc., 1997.